

Filed 6/4/19 In re: 7250 Franklin Avenue, No. 207 Los Angeles, California 90046

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re: 7250 Franklin Avenue, No. 207
Los Angeles, California 90046

B289174

(Los Angeles
County
Super. Ct. No.
BS084615)

G. GREGORY WILLIAMS,

Cross-Complainant and Appellant,

vs.

ANDREW RITHOLZ and LAW
OFFICES OF ANDREW RITHOLZ,
INC.,

Cross-Defendants and Respondents.

APPEAL from an order of the Superior Court of Los Angeles County, Edward B. Moreton, Jr., Judge. Affirmed.

G. Gregory Williams and Plernpit Polpantu, in pro. per., for Appellants.

Nemecek & Cole, Jonathan B. Cole, Mark Schaeffer, Vikram Sohal for Respondents.

INTRODUCTION

This appeal constitutes the latest installment in a 16-year saga of federal and state litigation, all arising from the non-judicial foreclosure sale of a single condominium unit in 2003. It likely will not be our last word on the subject, as three more related appeals are pending. Fortunately, this particular appeal raises but one easily resolved issue: whether the trial court erred in dismissing appellant G. Gregory Williams’s cross-complaint against respondents Andrew Ritholz and Law Offices of Andrew Ritholz, Inc. (collectively, Ritholz). Because Code of Civil Procedure section 583.210¹ mandates dismissal if a cross-complainant fails to serve a cross-defendant within three years of filing, and substantial evidence supports the trial court’s determination that Williams failed to serve Ritholz within the required time period, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background

As best we can, we will limit our discussion of legal issues to topics relevant to this narrow appeal. We begin, however, with an overview of the litigation in order to put this appeal in context and introduce the parties. The summary is excerpted from one of our previous opinions. (*R.E.F.S., Inc. v. Williams* (April 3, 2017, B266574) [nonpub. opn.].)

“Williams, who purchased the condominium in 1995, transferred title to his fiancée, P. Toi Polpantu, by a deed recorded on April 21, 1999. However, by a quitclaim deed that

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

was also dated April 21, 1999, but was not recorded, Polpantu transferred title back to Williams.

“Williams and Polpantu were living in the condominium when the condominium association served notice of an April 3, 2003 foreclosure sale for Polpantu’s nonpayment of approximately \$11,000 in association fees. Two days before the foreclosure sale, Williams filed his April 1, 2003 bankruptcy petition, but the petition did not disclose his interest in the condominium. When the April 3, 2003 foreclosure sale was held, Polpantu, not Williams, was the owner of record title. [Eli] Levi purchased the condominium at the foreclosure sale for \$215,000. One day after the foreclosure sale, Williams recorded the previously unrecorded April 21, 1999 quitclaim deed from Polpantu.’

“Williams’s April 2003 bankruptcy petition was dismissed in August 2003. It was followed by another bankruptcy petition, filed in October 2003 and dismissed in February 2004. In December 2003, the bankruptcy court ‘retroactively annulled the automatic stay to the date of Williams’s ... April 1, 2003 bankruptcy petition, thereby precluding Williams from attacking the April 3, 2003 foreclosure sale on the ground that the sale was conducted in violation of the automatic stay’ [citation]. The annulment of the automatic stay was affirmed on appeal and is now final. [Citations].

“Levi was granted a writ of possession in an unlawful detainer action, and [Williams and Polpantu] were evicted in late February 2004, 10 months after the foreclosure sale. In 2008, after many procedural complications, Levi obtained a default judgment, in which [title was quieted in his favor, the quitclaim deed from Polpantu to Williams was voided, record title to the

property was perfected in favor of Levi, Levi obtained a \$256,639.12 damages award against Polpantu and Williams, and Levi obtained additional relief.]

“Meanwhile, in July 2003, the foreclosure trustee, R.E.F.S., Inc., commenced this proceeding by filing a form ‘Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds’ from the trustee’s sale in the amount of \$198,600.62. (Civ. Code §2924j.)” (*R.E.F.S., Inc. v. Williams* (April 3, 2017, B266574) [nonpub. opn.])

In our April 3, 2017 decision, we reversed orders awarding the surplus to Levi, and remanded for further proceedings.

B. The Cross Complaint and Notice of Appeal

On July 10, 2014, Williams filed a cross-complaint against several cross-defendants, including Ritholz. Until then, Ritholz’s only involvement in these matters had been to serve as counsel of record for Levi.

On January 5, 2018, Ritholz specially appeared to file a motion “for mandatory dismissal of the cross-complaint” pursuant to section 583.250 because Williams failed to serve his cross-complaint and summons on Rithholz within three years of its filing. Ritholz concurrently filed a request for judicial notice, which included the summons for the cross-complaint — dated September 21, 2017 — and a blank proof of service of summons.

Williams did not oppose Ritholz’s motion to dismiss or the request for judicial notice. Nor did Williams appear at the hearing. The court granted Ritholz’s motion on February 22, 2018, finding Williams did not meet his burden of proving proper service of the cross-complaint.

Williams timely filed a notice of appeal, stating he was appealing the “order of the Superior Court, dismissing [Williams’s] cross-complainant [sic], with prejudice, and granting request for judicial notice entered on or about February 22, 2018; and all subsequent orders and/or judgments.”

DISCUSSION

We first address the threshold question of which issues are properly before us on appeal. Williams purports to appeal from the order dismissing his cross-complaint “and all subsequent orders and/or judgments.” Unspecified “subsequent” orders and judgments, which have yet to be entered, are not appealable. (*See* § 904.1.) Similarly, to the extent Williams seeks to challenge prior orders not specified in the notice of appeal, we lack jurisdiction to review them (even assuming they are appealable). (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073 [“Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from’ [citation.]”].) Accordingly, the only issue on appeal is whether the court erred in dismissing the cross-complaint for failure to serve it within three years as required by Code of Civil Procedure section 583.210.² It did not.

“Section 583.210, subdivision (a), provides that a summons and complaint ‘shall’ be served upon a defendant within three years after the action is commenced. Section 583.250, in turn,

² For this reason, we do not address the myriad other issues touched upon in Williams’s 91-page opening brief. We also note Polpantu was not a party to the cross-complaint. Therefore, she is not a proper party to this appeal. (*Niles v. City of San Rafael* (1974) 42 Cal.App.3d 230, 244 [“A party who is not aggrieved by an order or judgment has no standing to attack it on appeal”].)

provides that the action ‘shall’ be dismissed if service is not made within the statutorily prescribed time and that the foregoing requirements ‘are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.’ [Citation.]” (*Watts v. Crawford* (1995) 10 Cal.4th 743, 748.) The three year service limitation applies to cross-complaints as well as complaints. (*Inversiones Papaluchi S.A.S v. Superior Court* (2018) 20 Cal.App.5th 1055, 1061.) It is the cross-complainant’s burden to prove service of the summons and cross-complaint within the required time period. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439-1441.)

Williams argues there were two stays in place which divested the trial court of jurisdiction at the time it dismissed the cross-complaint. We disagree. First, Williams relies on a temporary discretionary stay issued in the trial court on February 4, 2015. That discretionary stay was lifted, however, on July 17, 2015. Even excluding the 163-day period between February 4 through July 17, 2015 from the three year calculation (*see* § 583.240, subd. (b)), there is no evidence in the record demonstrating Williams served Ritholz by the December 20, 2017 deadline. Second, Williams contends his appeal filed on December 18, 2017 in case No. B287098 automatically stayed all proceedings in the trial court. (§ 916, subd. (a) [perfecting appeal stays proceedings in trial court upon order appealed from].) We previously rejected this argument in *R.E.F.S., Inc. v. Williams* (April 3, 2017, B266574) [nonpub. opn.] (“the rules governing application of stays and undertakings on appeal in a civil action do not apply in a special proceeding”).

Alternatively, Williams contends he served Ritholz with the cross-complaint and summons by mail on July 13, 2014 (only

three days after filing the cross-complaint). Williams forfeited this argument by failing to raise it in the trial court. (*Blankenship v. Allstate Ins. Co.* (2010) 186 Cal.App.4th 87, 105.) In any event, Williams fails to cite to any evidence in the record demonstrating he served the cross-complaint on Ritholz. Nor does Williams explain how he could have served a summons on July 13, 2014 when the summons was not issued until September 21, 2017. And because Ritholz was not a party to the action, personal service was required. (§ 428.60, subd. (1).) Accordingly, substantial evidence supports the trial court's order dismissing the cross-complaint as against Ritholz. (*Graf v. Gaslight* (1990) 225 Cal.App.3d 291, 295, disapproved on another ground in *Watts v. Crawford* (1995) 10 Cal.4th 743, 758, fn. 13.)

DISPOSITION

The order dismissing Williams's cross-complaint as against Ritholz is affirmed. Ritholz is awarded his costs on appeal.

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CURREY, J.

WE CONCUR:

WILLHITE, acting P. J.

COLLINS, J.